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The Historical Significance, Modernization, and Future of the Video Privacy Protection Act

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The Historical Significance, Modernization, and Future of the Video Privacy Protection Act

June 21, 2014 · by Erica · in GGU Law Review.



(<http://ggulawreview.files.wordpress.com/2014/06/mouse.jpg>)

In the twenty first century, we are accustomed to the privacy protections that prohibit video rental service companies from releasing our consumer service history to other sources without first obtaining our written, signed consent. However, most consumers likely do not know the historical significance of why we came to appreciate these privacy protections or what the exact terms of these privacy protections are....

The Consumers' Perspective

Businesses have gained significant momentum by the Video Privacy Protection Act's ("VPPA") 2013 amendment in present and future video industry markets, such as online video streaming and social networking partnerships – and these impacts extend to the consumers. These changes can be considered as either beneficial or harmful. And even though the VPPA has "modernized" to some extent by incorporating modern technology and communications, it has not fully "modernized" to preserve the privacy rights the VPPA was enacted to protect.

First, now that "Online Consent" is permissible, it is as easy as clicking "I accept" on a browser webpage to share your favorite movies and video service providers within your network. "It's about time!" is the response most likely to come from the network-friendly user. Everything else we do online can be accepted and shared just as simply, but we did not have to wait until 2013 for this to happen. For those who have been waiting to share their most recently viewed television series with their friends, this is a great benefit. However, this can also be a scary concept for the cautionary user who prefers to keep his "Personally Identifiable Information" (PII) private. If this latter user decides he wants to share memories of a childhood movie with his childhood friend whom he connects with online only, he will be able to. But he will have to weigh how important it is to him to share this memory when he must conjointly allow his service providers to share his PII with their business partners. This amendment may have its social networking perks, but there is no provision here that furthers the interest of consumer privacy by allowing the video industry to obtain consent to share PII online. With so many people utilizing the web, it is probable that consumers will affirmatively eradicate the need for consumer privacy laws by over-sharing their information such as their video preferences on their social networks. And it will not matter the extent to which their service providers gather and take advantage of the consumers' PII, unless each consumer takes the "time and tenacity (<http://www.usatoday.com/story/tech/columnist/komando/2013/01/25/komando-delete-%20yourself-internet/1852143/>)" required to erase herself from the Internet.

The second provision provides that video rental companies must obtain consent in a "distinct and separate (<http://www.forbes.com/sites/firewall/2010/04/08/who-reads-the-fine-%20print-online-less-than-one-person-in-1000/>)" manner outside other terms and conditions. This requirement is the biggest benefit consumers could have asked for. This is because modern usage of fine print is illusory where only less than one in one thousand persons actually read the fine print online when accepting service contracts. As Andy Greenberg puts it in his article, *Who Reads The Fine Print Online? Less Than One Person in 1000* (<http://www.forbes.com/sites/firewall/2010/04/08/who-reads-the-fine-%20print-online-less-than-one-person-in-1000/>): "take a look at the actual statistics that show who reads the fine print, and the numbers are so close to zero that they call into question whether those legal disclosures should even be considered a safeguard for consumers." At the very least, the amendment grants consumers who are truly against allowing their service providers to share their PII with the providers' business partners an explicit opportunity to say NO.

The stalest portion of the amendment in furthering consumer privacy is that the consent period has increased to a two-year maximum if it is obtained in advance. Fortunately, the consumer can withdraw consent if he feels this time period is too long for him to trust a video company and their partners with his PII. This portion of the amendment adds absolutely no value for the consumer, who obtains zero financial benefit. It takes only a second to click a button, and an individual can simply accept to share their PII on a case-by-case basis just as easily as sharing their video

preferences with their social networks. However, providing blanket consents and even limited consents to video companies and their partners to PII for two years is nothing but intrusive to the consumer's privacy.

If a person truly wants to revoke every video company's right to share their PII, she can. This is because the last significant portion of the amendment requires video rental companies to provide consumers with the opportunity to withdraw their consent. So if she changes her mind and decides she does not want her video service provider to share her PII, even though she shared her video preference(s) with her best friend in a private message on her social network, she can prevent her video provider's access going forward – she just has a bit of footwork to put in. First, she will need to remember how much consent she has provided (whether it was one blanket consent or several, unique consents). Next, she will need to link these consents back to the individual video companies and track them down (either in person, via phone, or online). Finally, she will need to contact them and submit her revocation request. It is simple. And it is as unlikely as it is simple that most people will go through these steps – only less than one person in 1000 (<http://www.forbes.com/sites/firewall/2010/04/08/who-reads-the-fine-%20print-online-less-than-one-person-in-1000/>) even reads fine print... It is an extreme improbability that people in our “on demand world” would bother to re-trace their video rental and purchase history in order to eradicate any possible exploitation of their PII.

This online article is a shortened-summary of the in-depth research paper I wrote in Fall 2013. In that paper, I focused on the history of the Video Privacy Protection Act (VPPA) of 1988, an online streaming company's lawsuit, the resulting lobbying for change in the VPPA, the 2013 amendment of the VPPA, and the benefits and consequences of these changes. Here, I state only the 2013 amendment's impact on the consumers. However, the complete research paper is available on my LinkedIn page at <http://lnkd.in/bKnFHy7> (<http://lnkd.in/bKnFHy7>) or you may click on it under my “Experience” section of my full profile at <http://www.linkedin.com/pub/erica-williams/41/81/808/> (<http://www.linkedin.com/pub/erica-williams/41/81/808/>).

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